

AFFIRMATIVE ACTION PLAN
OF THE
MASSACHUSETTS TRIAL COURT

July, 1998

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I. Statement of Policy

The Trial Court is committed to a practice of affirmative action to:

1. promote cultural diversity;
2. ensure equal opportunity for all those currently employed or seeking employment with the Trial Court; and
3. remedy any past employment practices which have resulted, whether intentionally or not, in discriminatory treatment based on minority classification (race, color, or national origin), sex, age (over forty), sexual orientation, marital status, religion, disability, or Vietnam era veteran status.

The Trial Court will ensure that no person shall, on these grounds, be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in any employment practices, including but not limited to, recruitment, hiring, transfer, promotions, training, compensation, benefits, discipline and terminations.

In addition, it is the policy of the Trial Court that goods and services shall be purchased from agencies or companies which have exhibited an established policy and practice of nondiscrimination in employment or in the provision of services.

To this end, the Trial Court has prepared this Affirmative Action Plan (Plan). The purpose of the Plan is to:

1. identify how the Trial Court would appear without underutilization of minorities and women;
2. if different from the current profile, establish goals and timetables for achieving the ideal;
3. identify any discriminatory employment practices;
4. replace them with programs and practices which are not discriminatory, which remedy the effects of past discrimination, and which promote cultural diversity; and
5. monitor the overall operation of these programs and practices, and their success in moving the Trial Court towards its goal of equal opportunity.

This plan should not preempt any existing Trial Court policy providing the policy is at least equal to and consistent with the Plan.

The Trial Court is committed to implementing this Plan in a fair and effective manner, with the full resources available to the Trial Court.

II. Implementation

A. Introduction

In 1980, the Trial Court established an Affirmative Action Office to develop policy and establish affirmative action and equal employment opportunity activities. The Affirmative Action Officer is responsible for these activities, which are outlined below. The Affirmative Action Officer will be assisted by the staff of the Administrative Office of the Trial Court.

B. Office of Affirmative Action

The Affirmative Action Officer for the Trial Court reports directly to the Chief Justice for Administration and Management, and, at the discretion of the Chief Justice, the Executive Director of the Administrative Office of the Trial Court. This Officer prepares quarterly audits and submits semi-annual reports on affirmative action activities in the Trial Court to the Chief Justice for Administration and Management for review and publication.

The administration gives its full support to the Affirmative Action Officer in the following activities, though the Officer's efforts are not limited to these activities:

1. developing policy statements, affirmative action programs, and internal and external communication techniques;
2. identifying problem areas;
3. providing technical assistance to appointing authorities of the Trial Court and/or other personnel in meeting the requirements of the Plan;
4. monitoring all transfers and promotions and conducting inquiries into these transactions to ensure that minorities and women are given full opportunities for transfers and promotions;
5. investigating complaints of a discriminatory nature;
6. collecting, analyzing and publishing all statistical data as required in this Plan in order to measure the Plan's effectiveness in moving the Trial Court towards its goals and objectives, and identifying any need for remedial action;
7. acting as liaison between the Chief Justice for Administration and

Management and governmental agencies concerned with the regulation of equal employment opportunities;

8. Serving as liaison between the Chief Justice for Administration and Management and minority organizations, women's organizations and community action groups concerned with the equal employment opportunities of minorities and women, and maintaining a list of organizations effective in producing qualified minority and women applicants for employment in the Trial Court;
9. Conducting equal employment opportunity and affirmative action information sessions to:
 - a. keep management informed of the latest developments in the entire equal employment opportunity area; and
 - b. clarify the responsibilities of appointing authorities and department heads in equal employment opportunity and affirmative action policy, practices, and procedures;
10. Initiating and participating in projects aimed at equal employment in the Trial Court. Such activities may include participating in "Job Fairs"; recruiting at secondary schools, junior colleges, and colleges with predominant minority or women enrollments; and encouraging employees to refer minority and women applicants.

C. Hiring Authorities and Local Managers

Recipients of the Plan must carefully read and familiarize themselves with the Plan. They should circulate it to all personnel in their department who are involved in employment matters or in the purchasing of goods or services so that they, too, are familiar with the Plan.

These persons will be responsible for, though their activities are not limited to, the following:

1. assisting in identifying problem areas;
2. maintaining relationships with local minority organizations, women's organizations, community action groups and community service programs;
3. periodically auditing hiring and promotion patterns and training

programs to remove impediments to reaching goals and objectives;
and

4. working with the Affirmative Action Officer to ensure that Trial Court policies are being followed.

All employees are hired with the skills required for their positions. Employees should not feel burdened because their hiring, promotion, or other conditions of employment are consistent with Trial Court Affirmative Action efforts. Supervisors should work with their employees to ensure that they understand this, and act accordingly. The Trial Court will offer training to assist supervisors in this effort.

D. Dissemination

1. Internal

For the Plan to be effective, it is crucial that all employees know it exists and understand its content. The Affirmative Action Officer will disseminate the Plan internally as follows:

a. Employees

1. Distribute the Plan to all department heads within the Trial Court, and conduct special meetings with executive, management and supervisory personnel to explain the intent of the policy and individual responsibility for implementation.
2. Distribute the Statement of Policy to all employees and schedule special meetings with them to discuss the policy.
3. Distribute to each individual court its utilization analysis chart.
4. Discuss the Plan thoroughly in both employee orientation and management training programs.

b. Publications

1. Include the Plan in the Personnel Policies and Procedures Manual.

2. Publicize key features of the Plan in Trial Court publications such as the Annual Report and internal newsletters.
3. Feature both minority and nonminority employees (male, female, and disabled) in Trial Court publications.
4. Post the Statement of Policy on courthouse bulletin boards, along with Federal Equal Employment Opportunity posters.

c. Unions

Work with the Director of Human Resources to meet with union officials to inform them of the Plan, to enlist their commitment to the goals of the Plan, and to negotiate language for collective bargaining agreements which reflects this commitment.

2. External

To publicly affirm the Trial Court's commitment to the Plan, the Affirmative Action Officer or a designee will:

- a. Inform all recruiting sources verbally and in writing of the Plan, stipulating that they actively recruit and refer minorities and women for all positions listed.
- b. Notify minority and women's organizations, community agencies, community leaders, secondary schools and colleges of the Trial Court policy.
- c. Incorporate a nondiscrimination clause in all purchase orders, leases, and contracts for the procurement of goods and services.
- d. Inform prospective employees of the affirmative action program so that they can avail themselves of its benefits.
- e. Send written notification of Trial Court policy to all subcontractors, vendors, and suppliers requesting appropriate action on their part.

E. Internal Audit and Reporting Requirements

The Affirmative Action Officer is responsible for conducting quarterly audits of equal employment opportunity and affirmative action efforts. In the audit, the Officer monitors referrals, placements, transfers, promotions and terminations. The Officer also reviews local program results, and reports on these to the Chief Justice for Administration and Management.

Each February 1 and August 1, the Affirmative Action Officer prepares and submits Affirmative Action Status Reports to the Chief Justice for Administration and Management.

All appointing authorities are responsible for periodic internal audits to measure the effectiveness of their affirmative action efforts. Each division is required to submit a semi-annual report on this audit to the Affirmative Action Officer using a format disseminated by the Officer. The Officer advises appointing authorities of program effectiveness and recommends improvements at least once annually.

III. Utilization Analysis

Affirmative Action is called for when it has been determined that minorities and women are being underutilized in certain job categories of a workplace, given the availability of qualified minorities and women in the population from which that workplace can reasonably recruit. In sum, this is a finding that a workplace has fewer minorities or women than would reasonably be expected by their availability in particular labor market areas.

The Trial Court has completed several analyses to determine whether and in what areas and job categories underutilization exists. Goals and timetables have been established where it has been found.

On a periodic basis, the appointing authorities of each court will be sent the analyses for their respective courts. The entire set is available in the Affirmative Action Office.

The Trial Court emphasizes its commitment to equal employment opportunity for candidates and employees who are disabled or Vietnam era veterans. The Future Actions section of this Plan outlines the intention of the Trial Court to devise methods for identifying these individuals so that the Plan can be applied to them as well.

A. Workforce Analysis

The first step in identifying underutilization is to prepare a workforce analysis; that is, a look at the composition of the workplace.

The first part of the workforce analysis examines the entire system, listing all of the job titles in the system and indicating the number of employees in those titles. In particular, the analysis indicates for each title its level, the total number of incumbents, the total men and the total women, and the numbers of men and women who are Native American, Asian/Pacific Islander, Black, Cape Verdean, Hispanic, and White. Finally, it lists the percentages of incumbents for each title who are minorities and who are women.

The second part of the workforce analysis examines each court, listing the federally-defined Equal Employment Opportunity job categories represented in the court system and indicating, by court, the composition of employees in those categories. The information presented for each of the categories

is essentially the same as that presented for each title. The reason for categorizing is that the federal government has found that minorities and women are under represented in specific categories, and that it is most informative to investigate the categories in a workplace. The categories used in this Plan are: Official and Manager; Professional; Technician; Supervisor; Administrative Support (Supervisory Workers levels 13 - 18); Administrative Support; Service Workers; Supervisory Protective Service Workers; and Protective Service Workers.

B. Labor Market Analysis

The Affirmative Action Officer conducts ongoing labor market analyses to determine the availability of minorities and women having requisite skills in areas in which hiring authorities can reasonably recruit.

Every two years, in preparation for updating the Affirmative Action Plan, the Officer will examine statistics from the Division of Employment and Training, the Department of Labor, the Census Bureau, and local agencies to ensure that the goals of the Trial Court are accurate and current (see Appendix A).

C. Utilization Analysis and Goals and Timetables

By comparing the composition of minorities and women in each court (the workforce analysis) to the availability of workers with requisite skills in applicable labor market areas (the labor market analysis), the Trial Court has completed a utilization analysis of its workforce (see Appendix B).

Where the utilization analysis shows underutilization of minorities and women, the Trial Court has set goals for hiring and promotion so that in the future its workforce will resemble the labor market. The Trial Court is very careful to distinguish between goals and quotas. Quotas imply that numbers must be met. Goals imply that all good faith efforts will be made to reach utilization (see Appendix C).

The Trial Court intends to improve its method for setting goals by gathering statistics regarding turnover, promotions, terminations, etc. The "Future Actions" section of the Plan elaborates on this intent.

The Trial Court is setting goals in a good faith effort to ensure equal employment opportunity. It recognizes that the Plan will face challenges and readjustments due to the fluctuations in the fiscal situation and the slow and unpredictable turnover in the court system.

IV. Uniform Hiring Procedures

Affirmative Action requires more than vigilance in the elimination of discriminatory barriers to employment on the grounds of race, color, religion, sex, age, disability, marital status, religion, sexual orientation or Vietnam era veteran status. It must also entail positive and aggressive measures to ensure equal opportunity and nondiscrimination in the areas of hiring, promotion, demotion or transfer, recruitment, layoff and termination, rate of compensation, job assignments, in-service or apprenticeship training programs, and all conditions of employment, and to effect the full utilization of minorities, women, Vietnam era veterans, and disabled persons at all levels of the Trial Court. The following is the plan of the Trial Court for putting this into place (see "Future Actions" Section A).

A. The Application Process

1. Applications

a. Standard Forms

The Trial Court uses a standard application form in an effort to eliminate subtle discrimination which can occur when only resumes are used. Such a form guarantees that the same information will be available on all applicants. In addition, use of the standard form ensures that applications do not include questions which are not job related and which have been shown to disproportionately result in rejection of minorities and women.

Pursuant to section 4.000 of the Personnel Policies and Procedures Manual, all applicants for all positions must file an application to which they may attach a resume. Applications can be found in the Personnel Policies and Procedures Manual, at the Human Resources Department of the Trial Court, or at any court location throughout the Commonwealth.

b. Applicant Flow Data

Monitoring applicant flow allows the Affirmative Action Officer to discover discrimination in such areas as recruitment and the choice of applicants to interview. The Affirmative Action Office intends to computerize information pertinent to affirmative action efforts to better monitor these efforts (see "Future Actions" Section B).

2. Recruitment

a. Resource List

The Affirmative Action Resource List contains the names and addresses of agencies and organizations across the Commonwealth which can refer minority and women candidates for Trial Court positions. This list has been distributed to all appointing authorities.

Pursuant to section 4.203 of the Personnel Policies and Procedures Manual, appointing authorities may have to post notices of vacancies in agencies on this Affirmative Action Resources List.

b. Postings

The notice of vacancy must be posted and/or advertised for a period of ten (10) working days prior to the closing date. The posting, at a minimum, must be:

1. in reasonable, visible public places in the building in which the court where the vacancy has occurred is located;
2. in the office of the Chief Justice for the respective Trial Court Department;
3. in the case of an opening for a Probation Officer position, including Chief Probation Officer, with the Office of the Commissioner of Probation;
4. in the Human Resources Department of the Administrative Office of the Trial Court so that the position may be posted on the Trial Court Jobs Hot Line.

c. Advertising

In addition to placing the position on the Jobs Hot Line, appointing authorities are encouraged to advertise vacancies in local, regional, minority community, and women's newspapers provided that sufficient funds are available for such advertising.

3. Nepotism

Pursuant to section 4.304 of the Personnel Policies and Procedures Manual, appointments made within the Trial Court are to be made on the basis of merit. The Trial Court prohibits the practice and appearance of nepotism or favoritism in the hiring and promotion of employees.

4. Reference Checks

Pursuant to section 4.303 of the Personnel Policies and Procedures Manual, all applicants receive notice that reference checks will be conducted with previous employers. It is incumbent upon all appointing authorities to ensure that questions asked are job-related and relevant to a determination of the candidate's skills and abilities for the job under consideration. Only matters that are within specific, job-related parameters are proper areas for questioning.

5. Interviews

Pursuant to section 4.302 of the Personnel Policies and Procedures Manual, interviews must follow carefully prescribed guidelines to avoid discrimination and invasion of privacy. These include the following steps:

- a. All appointing authorities must attend information sessions offered by the Affirmative Action Officer to learn about their role in affirmative action and equal employment opportunity, and to learn how to conduct interviews in a nondiscriminatory fashion.
- b. Appointing authorities are to carefully analyze the knowledge, skills, and other requirements needed for the position that is available in a particular court location, consistent with the

duties contained in the job description.

- c. Based on that analysis, the appointing authority is to develop a set of questions to be asked in all interviews for each job. Candidates are rated based on their answers to these questions.
- d. The Trial Court recommends that appointing authorities convene screening panels to review applications and to interview candidates. The panels should include several members of the staff with whom the candidate will be working, and should include minorities and women.

6. Approval Process

Pursuant to section 4.400 of the Personnel Policies and Procedures Manual, once the appointing authority has identified the candidate for the position, that authority forwards all necessary forms to the following to ensure that appropriate and nondiscriminatory action was taken in selecting the candidate.

- a. In the case of a Probation Officer, to the Office of the Commissioner of Probation. All steps required for compliance with hiring directives are processed through the Commissioner of Probation for approval by the Chief Justice for Administration and Management.
- b. In the case of all other appointments, to the Administrative Office of the Trial Court.

B. Other Factors Affecting Equal Employment Opportunity

1. Job Descriptions

The Trial Court has expended a great deal of time and effort to produce job descriptions which accurately reflect position functions. The Trial Court recognizes that overstating requirements, such as requiring an academic degree when one is not necessary to perform the job, may discriminate against minorities and women. Therefore, special attention will be paid to academic experience and skill requirements to ensure that the requirements in themselves do not constitute inadvertent discrimination.

If department heads identify some responsibilities in a job as more important than others, they must investigate whether this may have a disparate effect on minorities or women.

The job descriptions are included in Appendix A of the Personnel Policies and Procedures Manual, which is sent to all managers involved in recruitment, screening, selection, and promotions. Pursuant to section 4.201 of the Manual, all postings of position vacancies must contain an adequate description of the requirements of the job to be filled.

2. Training and Technical Assistance

The Judicial Institute was formed to provide education and training for the Trial Court. The Office of Affirmative Action will work with the Judicial Institute to ensure that minority and female employees are aware of opportunities for training and career development, and that selection for all training and educational programs does not discriminate on the basis of minority classification (race, color, national origin), sex, age, sexual orientation, disability, marital status, religion or Vietnam era veteran status. The Affirmative Action Officer will assist the Judicial Institute in developing education programs on managing diversity.

3. Promotions and Transfers

The Trial Court is committed to providing minority and women employees with an equal opportunity for promotion and transfer. When the name of a candidate for a position is submitted to the Administrative Office of the Trial Court for approval, the Affirmative Action Officer reviews the process used in filling the position, including ensuring that adequate posting took place. The Officer also monitors transfers to ensure that decisions are not based on discriminatory practices. In addition, the Officer will work with the Judicial Institute so that education and training will prepare minority and women employees for promotion within the system.

4. Reduction in Workforce

When minorities or women are laid off, the action may be reviewed by the Affirmative Action Officer before it becomes final to determine if

such action represents a breakdown in the affirmative action program and therefore calls for remedial action. The Trial Court shall consider the policy of this Plan when selecting employees for layoff. The Affirmative Action Officer shall be actively involved in this process at all stages.

Upon termination of employment, an exit interview may be conducted to determine if there has been discrimination and if guidelines of the Trial Court Affirmative Action Plan have been adhered to.

V. Resolution Process

A. General Policy

The Trial Court will provide any employee the opportunity to file a complaint with the Affirmative Action Office alleging a failure of the Trial Court to abide by the policies of this Plan. The Trial Court will investigate and attempt to resolve the complaint informally through the following Resolution Process. Complaints may include such issues as adverse impact, maltreatment or harassment.

The Resolution Process does not preempt statutory or contractual rights. A person who chooses to use the Resolution Process is not precluded from filing a complaint or grievance with other appropriate parties such as the Massachusetts Commission Against Discrimination, the Equal Employment Opportunity Commission, or the Union, and shall be informed of the right to do so.

Further, though the following procedure involves filing a written complaint, the Affirmative Action Office encourages personnel to turn to the Office for information or counseling as soon as the need arises. The Office is committed in this way to preventing infractions of policies and to support employees facing difficulties due to any infractions.

B. Procedure

1. The Complaint

Trial Court employees are to direct complaints relating to such issues

as recruitment, hiring, transfers, promotions, training, compensation, benefits, discipline, or terminations to the Affirmative Action Officer, or, in the Officer's absence, to a designee. The employee shall file a written complaint with the Officer, who will log the complaint and notify the Legal Department that a complaint has been received.

The Officer will arrange an appointment with the complainant within ten working days of receipt of the initial complaint. The purpose of the meeting is to have the Officer understand the complainant's allegations and desired relief, and to give the Officer the opportunity to describe the complaint investigation procedure more fully.

If the Officer determines that the complaint is one of sexual harassment, the Officer shall advise the complainant of options available under the Trial Court's Sexual Harassment Policy and Procedure. The Officer will give the complainant a copy of that Policy and Procedure.

2. The Investigation

The Officer shall attempt to resolve the issue which generated the complaint within four weeks of the interview. In this process, the Officer shall privately interview relevant parties, examine appropriate documents, and gather other essential information relevant to the complaint. The individual being interviewed may have a representative of his or her choice at the interview. During this process, the Officer shall maintain confidentiality to the extent possible.

If the complaint has been made against a specific individual, the Officer will meet privately with the individual to discuss the complaint. That individual may respond to the complaint in writing.

All employees are expected to cooperate in any investigation conducted by the Affirmative Action Officer. Witnesses and relevant parties may be asked to sign written statements of their accounts. Should complainants express a desire that witnesses or other relevant parties not be interviewed, they shall sign a statement explaining the desire to waive that part of the investigation.

3. Conclusion

At the conclusion of the investigation, the Officer shall provide a

written summary of findings and any recommendations pursuant to the findings to the complainant, to the person charged with implementing any such recommendations, and to the Legal Department.

Should the complainant, the Affirmative Action Officer, and relevant parties be unable to agree upon the conclusions and recommendations, the complainant may request that the internal process be reviewed by the Executive Director of the Administrative Office of the Trial Court. The Affirmative Action Officer will attempt to provide information on alternatives for relief.

VI. Future Actions

A. Disabled Workers and Vietnam Era Veterans

The Trial Court intends to develop programs to implement equal employment opportunity for disabled workers and Vietnam era veterans. Initial efforts will focus on devising methods for identifying such workers, while respecting the right to self-identification and the retention of confidentiality.

As regards disabled workers, special attention will be given to developing policies on reasonable accommodation. Reasonable accommodation involves removing barriers which prevent or limit employment opportunities for eligible disabled persons, while not imposing undue hardship upon the court.

Policies regarding employment of Vietnam era veterans will provide for such concerns as compensation without regard to other benefits received and the availability of any special counseling these employees may require.

Policies for both groups will involve training of Trial Court employees. Such training should address stereotypes members of these groups may face which could limit their access to all jobs for which they are qualified.

B. Applicant Flow Data

In the future, the Trial Court will attempt to respond to the Massachusetts Supreme Judicial Court Gender Bias Study (1989) recommendation that it

"should implement a computerized database management program to enable it to measure the effectiveness of its equal employment opportunity and affirmative action programs. Such a system would compile and maintain applicant flow data for new hires and promotions and information about the qualifications and characteristics of both successful and unsuccessful applicants for promotion." (p. 186)

As explained previously, monitoring applicant flow allows the Trial Court to discover discrimination where it may not have otherwise. For instance, if the applicant pool does not reflect the labor market, the Trial Court will be alerted that it should review its recruitment practices. If, in the case where the applicant pool does reflect the available population, but the applicants interviewed do not, then the Trial Court will know to investigate the procedure for choosing applicants to interview.

C. Goals

The Trial Court is committed to improving its method for setting affirmative action goals. The best process for setting goals is one which tracks the opening of positions, both projected and known, and identifies trends in how openings are filled (i.e., whether by new hire or promotion). When such information is collected, computerized, and analyzed, the Affirmative Action Officer will be able to determine:

1. realistic goals specific to the workplace of the Trial Court;
2. whether it should focus efforts on hiring minorities and women or on promoting them;
3. whether members of these groups are leaving the system at higher rates than other personnel; and
4. what affirmative action efforts are necessary to address any problems identified.

To accomplish this, the Affirmative Action Officer will work with the Human Resources Department and the Information Technology Department to gather and computerize the necessary statistics. The Officer will work with

the Human Resources Department to ensure the correct identification of labor markets from which employees for various job classifications are recruited, and the correct categorization of job titles.

VII. GLOSSARY

DISABLED PERSON: Any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such impairment, or is regarded as having such impairment.

MINORITY:

BLACK: (African/American) All persons having origins in any of the Black racial groups of Africa.

HISPANIC: All persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

ASIAN or PACIFIC ISLANDER: All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands and Samoa.

**NATIVE AMERICAN,
ALASKAN, OR
ALEUTIAN:**

All persons having origins in any of the original peoples of North America, and maintaining cultural identification through tribal affiliation or recognition.

CAPE VERDEAN:

All persons having origins in the Cape Verde Islands.

VIETNAM ERA VETERAN:

"Vietnam veteran" shall mean (1) any person who performed such wartime service during the period commencing August fifth, nineteen hundred and sixty-four and ending on May seventh, nineteen hundred and seventy- five, both dates inclusive, or (2) any person who served at least one hundred and eighty days of active service in the armed forces of the United States during the period between February first, nineteen hundred and fifty-five and August fourth, nineteen hundred and sixty-four.

VIII. Relevant Laws and Regulations

A. Introduction

This section of the Plan provides a brief synopsis of the primary equal employment opportunity statutes, regulations, and executive orders. For more information on these laws, please contact the Affirmative Action Office.

B. Federal Laws

1. Title VII of the Civil Rights Act of 1964 (Title VII)

Title VII is the most far-reaching federal law on employment discrimination. Title VII prohibits all discrimination in employment because of race, color, sex, national origin, or religion. Title VII provides for an administrative and judicial enforcement scheme. The Equal Employment Opportunity Commission is the federal agency responsible for investigating an employee's claim of discrimination under Title VII. The federal courts have final responsibility for enforcing Title VII.

2. **Age Discrimination in Employment Act of 1967 (ADEA)**

The ADEA prohibits discrimination against applicants or employees who are 40 years and older. A limited exemption applies to bona fide executives and high policy-making employees as they are defined in the ADEA. The ADEA provides for a similar enforcement scheme as Title VII.

3. **Equal Pay Act of 1963**

The Equal Pay Act prohibits wage discrimination based on sex where the employees in question are performing work requiring equal skill, effort, and responsibility, and which are performed under similar working conditions. The Equal Pay Act also contains four exceptions to the equal pay for equal work requirement. The Equal Employment Opportunity Commission is responsible for administering this law. Unlike Title VII and the ADEA, however, the filing of a charge with the Commission is not a prerequisite to filing suit under the Equal Pay Act.

4. **Civil Rights Act of 1866 (Section 1981)**

Section 1981 prohibits discrimination on the basis of race or color in the making and enforcement of employment contracts. Unlike other anti-discrimination statutes, Section 1981 does not cover sex, age, religion, handicap, or other claims of discrimination. Enforcement of Section 1981 is limited to lawsuits.

5. **Rehabilitation Act Of 1973**

This law prohibits discrimination against physically or mentally handicapped persons by federal contractors and requires that such contractors establish a separate affirmative action program to employ, qualified handicapped individuals. Another section of this law prohibits employers receiving federal grants or funding from discriminating against employees because of their handicap. The Department of Labor's Office of Federal Contract Compliance Programs is the designated enforcement agency.

6. **The Vietnam Era Veterans Readjustment Assistance Act**

This law prohibits discrimination against disabled veterans and veterans of the Vietnam era. This law requires federal contractors to

undertake affirmative action measures on behalf of qualified veterans of the Vietnam era during the first four years after discharge, and qualified disabled veterans throughout their working life. The Department of Labor's Office of Federal Contract Compliance Programs is also responsible for administering this law.

7. **Immigration Reform and Control Act of 1986 (IRCA)**

The IRCA requires all employers to verify that all employees hired after November 6, 1986 are legally authorized to work in the United States. The IRCA also prohibits employers of four or more employees from discriminating on the basis of national origin or citizenship. The Department of Justice is responsible for enforcing the IRCA.

8. **Americans with Disabilities Act of 1990 (ADA)**

The ADA prohibits handicap discrimination in employment in a broader sense than the Rehabilitation Act of 1973. The ADA becomes effective in July 1992 for employers with 25 or more employees, and in July 1994 for employers with 15 or more employees. The ADA will be enforced by the Equal Employment Opportunity Commission.

9. **Executive Order 11,246**

Executive Order 11,246 prohibits certain federal contractors from discriminating on the basis of race, color, religion, sex or national origin. This order also requires that covered contractors develop a written affirmative action program to employ and encourage the advancement of women and racial minorities. This order is enforced by the Department of Labor's Office of Federal Contract Compliance Programs. This office has issued regulations which, among other things, specify the contents of affirmative action programs, and what federal contractors can expect in a compliance review.

C. **MASSACHUSETTS LAWS**

1. **Massachusetts Fair Employment Practices Law, G.L. c.151B, §4**

This law prohibits employment practices that discriminate on the

basis of race, color, religious creed, national origin, age, sex, sexual orientation, ancestry, or disability. Under this statute, the prohibition against sex discrimination includes sexual harassment. This statute covers employers with six or more employees. The Massachusetts Commission Against Discrimination is the state agency responsible for enforcing this law.

2. **Massachusetts Age Discrimination Law, G.L. c.149, §24A**

Massachusetts also has a separate age discrimination law that covers all private sector employers and prohibits employment practices that discriminate against individuals over the age of 40. This law is enforced by the Department of Labor and Industries.

3. **Massachusetts Equal Pay Law, G.L. c.149, §105A**

This law prohibits employers from paying female employees less than male employees for work of like or comparable character or from discriminating in any other way in the payment of wages on the basis of sex, unless such differences are based on seniority. The Department of Labor and Industries is the state agency responsible for administering this law.

4. **Massachusetts Equal Rights Law, G.L. c.93, §102**

This law provides that "[a]ll persons within the Commonwealth, regardless of sex, race, color, creed or national origin, shall have, except as otherwise provided or permitted by law, the same rights enjoyed by white male citizens, to make and enforce contracts" An individual who believes his/her rights under this statute have been violated may sue for "injunctive and other appropriate equitable relief."

5. **Governor's Code of Fair Practices - Executive Order 227**

This order reaffirms that non-discrimination and equal employment opportunity are the policies of the state. The order further directs each Executive Officer serving the Governor and all other state employers to take affirmative steps to ensure equality of opportunity in all programs and activities of the Commonwealth.

IX. APPENDICES

APPENDIX A

Background Information on Labor Market Analyses

The federal government suggests eight factors for its contractors to consider in determining underutilization. Though the Trial Court is not bound by these factors, the Affirmative Action Officer considers a number of them in the effort to access potential employees, to ensure that current employees have equal opportunity in such areas as training and promotion.

For purposes of determining goals, the Trial Court's Affirmative Action Plan relies most heavily on the factor which calls upon the employer to consider the availability of minorities and women having requisite skills in an area in which the contractor can reasonably recruit.

The Division of Employment and Training (formerly the Division of Employment Security) prepared a series of reports entitled "Labor Market Information for Affirmative Action Programs." These give information on the labor force of ten areas in Massachusetts, and on the Commonwealth as a whole.

The Trial Court has determined that for most jobs, each court can reasonably recruit from the labor market area of that court. Utilization analyses for most jobs were therefore based on availability figures from the local labor market areas. Where a court is not directly within the confines of a labor market area, figures for the largest close labor market area have been used.

The one exception to this rule is for the category of Officials and Managers. The Trial Court has concluded that the quality and attractiveness of these jobs calls for recruitment from the entire Commonwealth. Availability figures have therefore been set for this category of jobs from the report on availability in all of Massachusetts.

APPENDIX B

Findings of Utilization Analysis (September, 1992)

The Trial Court is pleased that since the inception of the Affirmation Action program in 1980, progress has been made in equal employment opportunity. For instance, the representation of minorities in the court system as a whole has increased from approximately 2% to almost 12%. Further, hiring authorities are now familiar with the concepts of equal employment opportunity and affirmative action.

The utilization analysis, which compares the make-up of workers in each court to the make-up of workers in the labor market, shows that the program has much work ahead of it. A summary of utilization reveals the following results for the system as a whole:

Minorities

<u>Job Category</u>	<u>Yes</u>	<u>No</u>	<u>%Y</u>
Officials/Managers	88	27	77%
Professionals	33	70	32%
Technicians	3	3	50%
Service Workers	2	2	50%
Clerical Supervisory	85	19	82%
Clerical	54	65	45%
Protective Service Supervisory	8	2	80%
Protective Services	33	49	40%

Yes = number of courts underutilized in the given category

No = number of courts which have reached parity in the given category

Females

<u>Job Category</u>	<u>Yes</u>	<u>No</u>	<u>%Y</u>
Officials/Managers	74	41	64%
Professionals	75	28	73%
Technicians	4	2	67%
Service workers	3	1	75%
Clerical Supervisory	28	76	27%
Clerical	2	117	2%
Protective Service Supervisory	9	1	90%
Protective Services	45	37	55%

Yes = number of courts underutilization in the given category

No = number of courts which have reached parity in the given category

These charts demonstrate that there is a trend in the Trial Court for minorities to be underutilized in a majority of courts in all except for the professional, clerical, and protective services categories, and for women to be underutilized in a majority of courts in all except for the clerical supervisory and clerical categories. Of particular concern for minority employees is the fact that though only 45% and 40% of courts show underutilization in the clerical and protective services categories respectively, almost twice that percentage show underutilization in supervisory level jobs in those categories.

The Trial Court will use the information from this utilization analysis in determining where to focus on-going affirmative action activities.

The Trial Court has set goals for hiring and promotion for the job categories which show an underutilization of minorities and women. The Trial Court has set both a long-range goal and specific short-range goals to ensure that the plan is on track.

Specifically, the ultimate goal is to achieve by the year 2002 a workforce where minorities and women mirror the available labor market. Given the opportunity to hire enough employees before that time, the Trial Court is committed to all good faith efforts to reach that ultimate goal as soon as possible.

In the meantime, the Trial Court has set short-term goals. These were calculated by an interim method which will be replaced by the system outlined in the Future Actions section of the Affirmative Action Plan. The current goals are targeted for the next update of the Plan, which will occur in two years. As that time represents one-fifth of the longer timetable, the Trial Court has calculated for each underutilized category in each court a one-fifth improvement towards its ultimate goal. (For instance, if a court would reach parity by hiring ten minority employees in a specific category, its short-term goal will be to hire or promote two such employees in the next two years.)